In addition to the cases cited, others in the foot-note[1] may be consulted for the law of partnership associations.

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THE GRADUATING EXAMINATION IN THE LAW SCHOOL.*

Let me express at the very outset my profound sense of the honor done me in inviting me to address this illustrious body of men, banded together, not for their own advantage, but for the cause of legal education and for the benefit of the youths of our land, who yearly congregate at our institutions of learning, to drink deeply there of that great well-spring of justice and morals—the Common Law.

In the expansion of that great system of jurisprudence to meet the needs of every business, every country and every clime, the judge, the practitioner and the teacher of the law, each takes a part, and neither plays an inferior rôle. It were an invidious task to institute a comparison between the service rendered by each of these in perfecting that system which now commands the enlightened admiration of the world. Rather let us turn our thoughts to a consideration of the ways and means whereby the teacher may increase his usefulness to his profession and to his country.

This honorable body has already in many directions rendered incalculable aid to the cause of legal education. In every law school the effect of your efforts is seen in the lengthening and expansion of courses, in higher standards of attainment, and in all the various ways suggested by an intelligent comparison of methods and results.

Everywhere the law school is now alive to the dignity and importance of its functions. It is exacting of the student good honest work in the class-room. It is requiring him in his preparation for the bar to take the time to ponder, reflect and digest, as well as to acquire. In some instances it is requiring, as a preliminary to legal studies, a thorough academic training. It is demanding of the student more original legal

[1] Maloney *v.* Bruce, 94 Pa. 249; Eliot *v.* Himrod, 108 Pa. 569; Briar Hill Coal and Iron Co. *v.* Atlas Works, 146 Pa. 290, 23 Atl. 326; Rouse, Hazard & Co. *v.* Donovan, (Mich.) 27 L. R. A. 577; Rouse, Hazard & Co. *v.* Detroit Cycle Co. (Mich.), 38 L. R. A. 794; Staver & Abbot Mfg. Co. *v.* Blake (Mich.), 38 L. R. A. 798. See also Liverpool Ins. Co. *v.* Oliver, 10 Wall. 566.

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investigation, the better to prepare him for the professional duties that lie before him. The value of these things is now too well appreciated to need further discussion.

But there is one matter connected with legal education, the value of which, as an educational force, it has seemed to me, we have not appreciated perhaps as we should. I refer to the Graduating Examination.

I have concluded, therefore, to consider briefly the nature, character and purposes of the examination, not with the expectation of advancing new ideas, but simply with the hope that it may provoke a helpful discussion.

The Examination, I apprehend, should fulfill a two-fold function. In the first place, it operates as a test of the student's knowlege of principles, his ability to apply them, and his fitness to enter upon the practice of his profession. In this aspect it is not to be regarded as a teaching force, but merely as a means of ascertaining how successful has been the teaching. It is simply a measure, a standard by which the student's acquirements are to be weighed.

But in its second aspect the Examination is much more than a mere test of knowledge. It is susceptible of use as a great educational factor in itself, because the student is thereby compelled to review the work he has done for the class-room with a thoroughness not otherwise attainable.

To obtain a proper acquaintance with any branch of learning, it is essential that it should be studied not only in detail, but as a whole. The student must familiarize himself with the relations of the parts to the whole, and to each other, as well as with the *minutiæ* of each part. The class-room work furnishes the minute knowledge of detail, but permits only imperfect glimpses of the whole and of the correlated parts. The latter can only be attained by a systematic and rapid review.

Should one of us desire in a limited time to obtain a thorough familiarity with this beautiful city, he could select no way of achieving this result so quickly and thoroughly as by examining first the details of every street and park, and then, mounting to some glittering tower, obtain a view of the whole city, thus fixing permanently in his mind the relations and directions of all the various parts, which before he had studied in sections. So, one who desires an accurate and philosophic knowledge of any subject may best acquire it by the careful study of detail under competent teachers, suplemented by his own thorough review of the whole.

In the study of the law, perhaps more than in that of any other science, "damnable iteration," the most thorough and constant review of past work, is essential to the student's successful mastery of the subject. Review! Review! Review! Too much emphasis cannot be laid upon this advice to the student of law, nor can it be repeated too often, nor enforced too stringently. For alas! human beings are so constituted as always to be anxious to attain a desired goal with the least possible effort, and ever to be allured by names rather than things, by shadows rather than substance. When applied to a candidate for a law degree in one of our schools, these characteristics of human nature work out in many cases the peculiar result that the student worships and labors for the degree, rather than the knowledge which the degree represents, and will attain the coveted diploma with the least possible effort, consistent with certainty of success.

In such cases—and they constitute the rule rather than the exception—it is bootless to explain the advantage and necessity of review in order to the acquisition of a thorough knowledge of the subject. In the abstract, the student recognizes that he is seeking knowledge, but in the concrete he is seeking the degree—pursuing the shadow, not the substance. Unless therefore, by means of searching examinations, a review is made essential to the degree, the student will rarely commit the (to him) unpardonable folly of doing more work than is called for.

It is for the most part practically impossible, nor indeed is it desirable, that the review should be personally conducted by the teacher or his assistants. In this matter the student must usually work out his own salvation. Nothing short of the requirement that he must pass searching examinations for his degree will induce him to enter voluntarily upon this arduous task.

It is this office of the graduating examination that differentiates it from the examination for admission to the bar. The latter has no other purpose than to test the candidate's knowledge and his fitness to practice his profession, while the graduating examination, as a review-compelling medium, fills an important place in the teaching of the law, in addition to its function as a mere measure of attainment. It may therefore well bear a closer scrutiny of the principles which should regulate it in order to its most successful application in both its aspects.

I. Written or Oral?

The first practical question that arises is: Should the examination be written or oral? In the absence of some insurmountable practical

obstacle, there can be little doubt in the mind of one who has used both forms that the written examination is greatly preferable, not only because it avoids the danger of personal embarrassment on the part of the student (sometimes a very patent source of failure), but also and chiefly because it is much more fair and just both to the student and to the school.

II. Long or Short?

In the next place, should the examination be long or short? As a test of the student's knowledge, the ideal examination would be that which would require for the attainment of the perfect mark the correct and accurate rendition by the student of every principle comprised in the particular course upon which the examination is being held. The accurate grading of such a paper would show with precision the exact percentage of knowledge possessed by the student. In other words, the ideal examination is that which asks an indefinite or infinite number of questions upon the subject.

But to give such an examination is, of course, as utterly impracticable as it is impossible that two parallel lines should meet. All we can hope for is a remote approximation to this ideal. That the approximation should be other than very remote is rendered impossible by many practical considerations, the chief of which are the impracticability in general of devoting more than one day to a single examination and the physical limitations of the student.

Practically therefore the extreme limit of time to be allotted to an examination should not exceed eight hours—that is, it should be arranged to occupy the average student for no longer period. Perhaps six hours would be a more reasonable limit.

Subject to these practical limitations, and others dictated by convenience in particular cases, the principle seems plain: The more the student is required to tell, the fairer is the test of his knowledge.

III. Theoretical or Practical?

Another point arises with respect to the character of the questions to be asked. These may be either theoretical or practical.

The *theoretical* question is one which may be answered in the very words of the text-book or teacher. The student is called upon to *remember* the statements of definitions and principles, but not to *apply* them.

Upon the *practical* examination, on the other hand, the questions are stated more or less in the form in which they would be apt to arise

in practice, and the student is forced to rely for his answers, not only upon his knowledge and memory of principles stated, but also upon his ability to apply the principles he has learned.

In another form of the practical examination, which, for want of a better term, we may call the *ultra-practical* examination, the student is compelled not only to apply to a concrete case the principles he has learned, but to reason in a legal way from those principles to new and more advanced conceptions which he has never seen formulated.

Each of these forms of question has its peculiar advantages. Probably the least valuable is the theoretical, for it in the main tests the memory rather than the understanding. The sort of examination that constitutes the fairest test for one type of mind may not be so fair in the case of a different type. It is to be noted also that each of these forms of examination represents a different sort of knowledge, each sort being occasionally needed by the practitioner. It would seem reasonably to follow that the fairest general test would be an examination wherein all these varieties of question are judiciously mingled.

IV. The Honor System.

I would be recreant to my duty should I fail, in this noble presence, to lift my voice in favor of one feature of the Examination, which, unfortunately, I cannot but believe, does not prevail in all our institutions. I refer to the examination conducted upon the Honor System.

Originated in 1842 at Jefferson's noble creation, the University of Virginia, which I am proud to serve, its intrinsic merit has led to its adoption in many of the schools and colleges of the country.

With the theory of the Honor System you are doubtless all more or less familiar. It relies upon the principle of student self-government, and can only be successfully supported by the favorable sentiment of the student-body. It may be extended to other matters beside examinations, but in its application to the latter, the student makes it a point of honor to give and receive no assistance upon any examination, and at the University of Virginia the student-body itself punishes any offender against its code of honor by summary expulsion, the faculty's kind offices towards that end being unnecessary. Such a punishment is terrible in its consequences to the individual, for it marks him for life with the brand of dishonor.

I hope I shall live to see the Honor System adopted by the free voice of the students themselves in every great institution of our country.

V. The Grading of Examination Papers.

Objection is frequently raised to a high and fixed examination standard that it is unfair and unjust, since the student's percentage will depend in large measure upon the whim or caprice of the person grading his paper; or at least that it is fluctuating and uncertain, since a certain grade with one teacher or at one institution may mean a very different thing from the same grade as used by another teacher or at another institution.

And it must be admitted that the grading of papers cannot, in the nature of things, be quite mathematically exact. Neither for that matter can the grading of a student's answers in the class-room. But I contend earnestly that, given a conscientious examiner, disposed to do full justice both to his school and his student, there can be made a very near approach to mathematical certainty.

My own personal observation and experience, if you will pardon a reference to it, has clearly demonstrated to my mind that a student's percentage in an examination under one professor will furnish a very close index to his percentage upon an examination held under a different professor about the same time. There may be a variation of two or three points in the hundred, but rarely more. Numerous instances of this fact each year in my own experience surprise me by their strong testimony to the accuracy with which papers may be graded.

I assert therefore with the profoundest conviction of the truth of the statement that, given examiners who desire to administer exact justice between the student and the institution they serve, there is no danger that an examination standard fixed at a certain point will be materially varied from. The important condition is that the examiner should be imbued with the desire to administer *exact justice.*

Indeed, a sufficiently high numerical value being attached to each question, the grading can be made very accurate. Something of course must be left to the examiner's judgment in ascertaining the value of an answer—more and more as the examination becomes more practical in its character. But in any event the examiner's discretion can properly be invoked only within very small limits. There is room only for small errors of judgment, and these are apt to cancel one another.

VI. The Examination Standard.

Thus far, in discussing the various attributes of the Examination, we have regarded it merely in its aspect as a measure or test of the

student's knowledge. The next and last point upon which I wish to touch—the Examination Standard—introduces also into the discussion that other most important view-point of the examination—its aspect as a review-compelling medium.

While the percentage required for graduation must depend in some measure upon the form of examination, the modes of instruction and the customs and traditions of each school, there are some general principles which we may look to as proper to regulate this very important matter.

One thing is certain, the higher the examination standard, the more thoroughly will the student be compelled to do his work both for the class-room and by way of review, and the more law must he know when he comes into the examination room.

It has been objected that a high examination standard leads the student to cram his head full of propositions for examination purposes, which he will forget immediately afterwards. There are some great law schools in this country which require of the applicant for *honors* a much higher percentage upon examination than is demanded of the ordinary candidate for the degree. Ask these institutions whether their honor-men are regarded as below par—ranking below the average candidate for the degree because of the increased standard?

But the objection scarcely needs this refutation. One who has once learned principles so thoroughly that he can turn and twist and apply them to any concrete case likely to arise is not liable to forget them afterwards, even though the primary purpose in learning them is to pass a searching examination. Exactly the same objection may be applied to a high standard in the class-room work.

The truth is that the student does forget a good deal of what he learns either for recitation or examination, but he also remembers a great deal. He finds little difficulty in recalling what he has once learned and he has had the benefit of the mental discipline and training undergone in once learning it. A higher examination standard merely compels him to review and grasp more firmly the principles learned in the class-room.

In the preparation of this paper, I have written to nineteen of the most prominent law schools in this country, with the intention of ascertaining their examination standards. They very courteously replied giving me the information desired, which may be summarized as follows: Two schools had no fixed standard, requiring only that each professor be satisfied with his students' attainments; one required

fifty-five per cent. as the standard for general graduation; three required a standard of *sixty* per cent.; one required *sixty-five* per cent.; five required *seventy* per cent.; three, *seventy-five* per cent.; three, *eighty* per cent; and one, *eighty-three* per cent.

As a practical illustration of the advantages of a high examination standard, let us suppose a standard of eighty per cent. as opposed to sixty-five per cent. Is it not apparent that the higher standard would compel the average student to do much more thorough work in class and by way of review? And would it not follow that the degree would stand for much higher attainments on the part of the average graduate?

Let me not be misunderstood. I do not mean to imply that the student would thus be given greater opportunities to learn. Indeed at some of our law schools those opportunities could hardly be improved. Along those lines our standards have been greatly elevated during the last few years, largely through your efforts.

Nor would it imply any particular advance on the part of the best students, who would probably reach the higher mark in any event.

It would simply mean that the *average* student would be forced to take more advantage of the opportunities afforded, do more thorough work and prepare himself better for graduation and finally for his profession.

Would not this body do well to look into this matter, and inquire whether advantage would not result to the cause of legal education by a hearty effort to bring about a greater uniformity and an elevation of the examination standards in our law schools? The reforms you have already advocated have done much to raise the standard of attainment of our *best* graduates. The adoption of higher examination standards would go far towards elevating the rank and file.